

## § 60-741.42

## 41 CFR Ch. 60 (7-1-14 Edition)

employee or applicant for employment for inspection upon request. The location and hours during which the program may be obtained shall be posted at each establishment.

### § 60-741.42 Invitation to self-identify.

(a) *Pre-offer.* (1) As part of the contractor's affirmative action obligation, the contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is an individual with a disability as defined in § 60-741.2(g)(1)(i) or (ii). This invitation shall be provided to each applicant when the applicant applies or is considered for employment. The invitation may be included with the application materials for a position, but must be separate from the application.

(2) The contractor shall invite an applicant to self-identify as required in paragraph (a) of this section using the language and manner prescribed by the Director and published on the OFCCP Web site.

(b) *Post-offer.* (1) At any time after the offer of employment, but before the applicant begins his or her job duties, the contractor shall invite the applicant to inform the contractor whether the applicant believes that he or she is an individual with a disability as defined in § 60-741.2(g)(1)(i) or (ii).

(2) The contractor shall invite an applicant to self-identify as required in paragraph (b) of this section using the language and manner prescribed by the Director and published on the OFCCP Web site.

(c) *Employees.* The contractor shall invite each of its employees to voluntarily inform the contractor whether the employee believes that he or she is an individual with a disability as defined in § 60-741.2(g)(1)(i) or (ii). This invitation shall be extended the first year the contractor becomes subject to the requirements of this section and at five year intervals, thereafter, using the language and manner prescribed by the Director and published on the OFCCP Web site. At least once during the intervening years between these invitations, the contractor must remind their employees that they may voluntarily update their disability status.

(d) The contractor may not compel or coerce an individual to self-identify as an individual with a disability.

(e) The contractor shall keep all information on self-identification confidential, and shall maintain it in a data analysis file (rather than in the medical files of individual employees). See § 60-741.23(d). The contractor shall provide self-identification information to OFCCP upon request. Self-identification information may be used only in accordance with this part.

(f) Nothing in this section shall relieve the contractor of its obligation to take affirmative action with respect to those applicants or employees of whose disability the contractor has knowledge.

(g) Nothing in this section shall relieve the contractor from liability for discrimination in violation of section 503 or this part.

### § 60-741.43 Affirmative action policy.

Under the affirmative action obligations imposed by the act, contractors shall not discriminate because of physical or mental disability and shall take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level. Such action shall apply to all employment activities set forth in § 60-741.20.

### § 60-741.44 Required contents of affirmative action programs.

Acceptable affirmative action programs shall contain, but not necessarily be limited to the following elements:

(a) *Policy statement.* The contractor shall include an equal opportunity policy statement in its affirmative action program, and shall post the policy statement on company bulletin boards. The contractor must ensure that applicants and employees with disabilities are provided the notice in a form that is accessible and understandable to the individual with a disability (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). The policy statement shall indicate the top United States executive's (such as the

Chief Executive Officer or the President of the United States Division of a foreign company) support for the contractor's affirmative action program, provide for an audit and reporting system (see paragraph (h) of this section) and assign overall responsibility for the implementation of affirmative action activities required under this part (see paragraph (i) of this section). Additionally, the policy shall state, among other things that the contractor will: recruit, hire, train, and promote persons in all job titles, and ensure that all other personnel actions are administered without regard to disability; and ensure that all employment decisions are based only on valid job requirements. The policy shall state that employees and applicants shall not be subjected to harassment, intimidation, threats, coercion, or discrimination because they have engaged in or may engage in any of the following activities:

- (1) Filing a complaint;
- (2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of section 503 or any other Federal, State, or local law requiring equal opportunity for individuals with disabilities;
- (3) Opposing any act or practice made unlawful by section 503 or its implementing regulations in this part, or any other Federal, State or local law requiring equal opportunity for individuals with disabilities; or
- (4) Exercising any other right protected by section 503 or its implementing regulations in this part.

(b) *Review of personnel processes.* The contractor shall ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees with known disabilities for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that its personnel processes do not stereotype individuals with disabilities in a manner which limits their access to all jobs for which they are qualified. In addition, the contractor shall ensure that applicants and employees with disabilities have equal access to its personnel

processes, including those implemented through information and communication technologies. The contractor is required to provide necessary reasonable accommodation to ensure applicants and employees with disabilities receive equal opportunity in the operation of personnel processes. The contractor is also encouraged to make its information and communication technologies accessible, even absent a specific request for reasonable accommodation.<sup>3</sup> The contractor shall periodically review such processes and make any necessary modifications to ensure that these obligations are carried out. A description of the review and any necessary modifications to personnel processes or development of new processes shall be included in any affirmative action programs required under this part. The contractor must design procedures that facilitate a review of the implementation of this requirement by the contractor and the Government.

(c) *Physical and mental qualifications.*

(1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the review of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out qualified individuals with disabilities, they are job-related for the position in question and are consistent with business necessity.

(2) Whenever the contractor applies physical or mental qualification standards in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion or training, to

<sup>3</sup>Contractors are encouraged to make their information and communication technology accessible. There are a variety of resources that may assist contractors in assessing and ensuring the accessibility of its information and communication technology. These include the Web Content Accessibility Guidelines (WCAG 2.0) of the World Wide Web Consortium Web Accessibility Initiative, online at [www.w3.org/WAI/intro/wcag.php](http://www.w3.org/WAI/intro/wcag.php), and the regulations implementing the accessibility requirements for Federal agencies prescribed in section 508 of the Rehabilitation Act. Information on section 508 may be found online at <http://www.section508.gov/index.cfm>. This Web site also provides information about various State accessibility requirements and initiatives.

the extent that qualification standards tend to screen out qualified individuals on the basis of disability, the standards shall be related to the specific job or jobs for which the individual is being considered and consistent with business necessity. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph (c).

(3) The contractor may use as a defense to an allegation of a violation of paragraph (c)(2) of this section that an individual poses a direct threat to the health or safety of the individual or others in the workplace. (See § 60-741.2(e) defining direct threat.)

(d) *Reasonable accommodation to physical and mental limitations.* (1) As is provided in § 60-741.21(a)(6), as a matter of nondiscrimination, the contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability unless it can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As a matter of affirmative action, if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee's disability. If the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.

(2) *Reasonable accommodation procedures.* The development and use of written procedures for processing requests for reasonable accommodation is a best practice that may assist the contractor in meeting its reasonable accommodation obligations under section 503 and this part. Such procedures help ensure that applicants and employees are informed as to how to request a reasonable accommodation and are aware of how such a request will be processed by the contractor. They also help ensure that the contractor's supervisors and managers know what to do should they receive a request for reasonable accommodation, and that all requests for ac-

commodation are processed swiftly, within a reasonable period of time. The development and use of written reasonable accommodation procedures is not required by this part, and it is not a violation of this part for a contractor not to have or use such procedures. However, appendix B of this part provides guidance to contractors that choose to develop and use written reasonable accommodation procedures.

(e) *Harassment.* The contractor must develop and implement procedures to ensure that its employees are not harassed on the basis of disability.

(f) *External dissemination of policy, outreach, and positive recruitment—*(1) *Required outreach efforts.* (i) The contractor shall undertake appropriate outreach and positive recruitment activities such as those listed in paragraph (f)(2) of this section that are reasonably designed to effectively recruit qualified individuals with disabilities. It is not contemplated that the contractor will necessarily undertake all the activities listed in paragraph (f)(2) of this section or that its activities will be limited to those listed. The scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources and the extent to which existing employment practices are adequate.

(ii) The contractor must send written notification of company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers, requesting appropriate action on their part.

(2) *Examples of outreach and recruitment activities.* Below are examples of outreach and positive recruitment activities referred to in paragraph (f)(1) of this section.

(i) Enlisting the assistance and support of the following persons and organizations in recruiting, and developing on-the-job training opportunities for individuals with disabilities, in order to fulfill its commitment to provide equal employment opportunity for such individuals:

(A) The State Vocational Rehabilitation Service Agency (SVRA), State

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mental health agency, or State developmental disability agency in the area of the contractor's establishment;

(B) The Employment One-Stop Career Center (One-Stop) or American Job Center nearest the contractor's establishment;

(C) The Department of Veterans Affairs Regional Office nearest the contractor's establishment (*www.va.gov*);

(D) Entities funded by the Department of Labor that provide recruitment or training services for individuals with disabilities, such as the services currently provided through the Employer Assistance and Resource Network (EARN) (*www.earnworks.com*);

(E) Local Employment Network (EN) organizations (other than the contractor, if the contractor is an EN) listed in the Social Security Administration's Ticket to Work Employment Network Directory (*www.yourtickettowork.com/endir*);

(F) Local disability groups, organizations, or Centers for Independent Living (CIL) near the contractor's establishment;

(G) Placement or career offices of educational institutions that specialize in the placement of individuals with disabilities; and

(H) Private recruitment sources, such as professional organizations or employment placement services that specialize in the placement of individuals with disabilities.

(ii) The contractor should also consider taking the actions listed below to fulfill its commitment to provide equal employment opportunities to individuals with disabilities:

(A) Formal briefing sessions should be held, preferably on company premises, with representatives from recruiting sources. Contractor facility tours, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefing. At any such briefing sessions, the company official in charge of the contractor's affirmative action program should be in attendance when possible. Formal arrangements should be made for referral of applicants, follow up

with sources, and feedback on disposition of applicants.

(B) The contractor's recruitment efforts at all educational institutions should incorporate special efforts to reach students who are individuals with disabilities.

(C) An effort should be made to participate in work-study programs for students, trainees, or interns with disabilities. Such programs may be found through outreach to State and local schools and universities, and through EARN.

(D) Individuals with disabilities should be made available for participation in career days, youth motivation programs, and related activities in their communities.

(E) The contractor should take any other positive steps it deems necessary to attract individuals with disabilities not currently in the work force who have requisite skills and can be recruited through affirmative action measures. These individuals may be located through State and local agencies supported by the U.S. Department of Education's Rehabilitation Services Administration (RSA) (*http://rsa.ed.gov*), local Ticket-to-Work Employment Networks, or local chapters of groups or organizations that provide services for individuals with disabilities.

(F) The contractor, in making hiring decisions, should consider applicants who are known to have disabilities for all available positions for which they may be qualified when the position(s) applied for is unavailable.

(3) *Assessment of external outreach and recruitment efforts.* The contractor shall, on an annual basis, review the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities. The contractor shall document each evaluation, including at a minimum the criteria it used to evaluate the effectiveness of each effort and the contractor's conclusion as to whether each effort was effective. Among these criteria shall be the data collected pursuant to paragraph (k) of this section for the current year and the two most recent previous years. The contractor's conclusion as

to the effectiveness of its outreach efforts must be reasonable as determined by OFCCP in light of these regulations. If the contractor concludes the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, it shall identify and implement alternative efforts listed in paragraphs (f)(1) or (f)(2) of this section in order to fulfill its obligations.

(4) *Recordkeeping obligation.* The contractor shall document all activities it undertakes to comply with the obligations of this section, and retain these documents for a period of three (3) years.

(g) *Internal dissemination of policy.* (1) A strong outreach program will be ineffective without adequate internal support from supervisory and management personnel and other employees. In order to assure greater employee cooperation and participation in the contractor's efforts, the contractor shall develop the internal procedures listed in paragraph (g)(2) of this section for communication of its obligation to engage in affirmative action efforts to employ and advance in employment qualified individuals with disabilities. It is not contemplated that the contractor's activities will be limited to those listed. These procedures shall be designed to foster understanding, acceptance and support among the contractor's executive, management, supervisory, and other employees and to encourage such persons to take the necessary actions to aid the contractor in meeting this obligation.

(2) The contractor shall implement and disseminate this policy internally as follows:

(i) Include it in the contractor's policy manual or otherwise make the policy available to employees;

(ii) If the contractor is a party to a collective bargaining agreement, it shall notify union officials and/or employee representatives of the contractor's policy and request their cooperation;

(3) The contractor is encouraged to additionally implement and disseminate this policy internally as follows:

(i) Inform all employees and prospective employees of its commitment to engage in affirmative action to in-

crease employment opportunities for individuals with disabilities. The contractor should periodically schedule special meetings with all employees to discuss policy and explain individual employee responsibilities;

(ii) Publicize it in the company newspaper, magazine, annual report and other media;

(iii) Conduct special meetings with executive, management, and supervisory personnel to explain the intent of the policy and individual responsibility for effective implementation making clear the chief executive officer's support for the affirmative action policy;

(iv) Discuss the policy thoroughly in both employee orientation and management training programs;

(v) Include articles on accomplishments of individuals with disabilities in company publications; and

(vi) When employees are featured in employee handbooks or similar publications for employees, include individuals with disabilities.

(h) *Audit and reporting system.* (1) The contractor shall design and implement an audit and reporting system that will:

(i) Measure the effectiveness of the contractor's affirmative action program;

(ii) Indicate any need for remedial action;

(iii) Determine the degree to which the contractor's objectives have been attained;

(iv) Determine whether known individuals with disabilities have had the opportunity to participate in all company sponsored educational, training, recreational, and social activities;

(v) Measure the contractor's compliance with the affirmative action program's specific obligations; and

(vi) Document the actions taken to comply with the obligations of paragraphs (h)(1)(i) through (v) of this section, and retain these documents as employment records subject to the recordkeeping requirements of § 60-741.80.

(2) Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.

(i) *Responsibility for implementation.* An official of the contractor shall be assigned responsibility for implementation of the contractor's affirmative action activities under this part. His or her identity should appear on all internal and external communications regarding the company's affirmative action program. This official shall be given necessary senior management support and staff to manage the implementation of this program.

(j) *Training.* All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes shall be trained to ensure that the commitments in the contractor's affirmative action program are implemented.

(k) *Data collection analysis.* The contractor shall document the following computations or comparisons pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years:

(1) The number of applicants who self-identified as individuals with disabilities pursuant to § 60-741.42(a), or who are otherwise known to be individuals with disabilities;

(2) The total number of job openings and total number of jobs filled;

(3) The total number of applicants for all jobs;

(4) The number of applicants with disabilities hired; and

(5) The total number of applicants hired.

#### § 60-741.45 Utilization goals.

The utilization goal is not a rigid and inflexible quota which must be met, nor is it to be considered either a ceiling or a floor for the employment of particular groups. Quotas are expressly forbidden.

(a) *Goal.* OFCCP has established a utilization goal of 7 percent for employment of qualified individuals with disabilities for each job group in the contractor's workforce, or for the contractor's entire workforce as provided in paragraph (d)(2)(i) of this section.

(b) *Purpose.* The purpose of the utilization goal is to establish a benchmark against which the contractor must measure the representation of individuals within each job group in its workforce, or within the contractor's entire

workforce as provided in paragraph (d)(2)(i) of this section. The utilization goal serves as an equal employment opportunity objective that should be attainable by complying with all aspects of the affirmative action requirements of this part.

(c) *Periodic review of goal.* The Director of OFCCP shall periodically review and update, as appropriate, the utilization goal established in paragraph (a) of this section.

(d) *Utilization analysis—(1) Purpose.* The utilization analysis is designed to evaluate the representation of individuals with disabilities in each job group within the contractor's workforce, or to evaluate the representation of individuals with disabilities in the contractor's entire workforce as provided in paragraph (d)(2)(i) of this section, with the utilization goal established in paragraph (a) of this section.

(2) *Grouping jobs for analysis.* The contractor must use the same job groups established for utilization analyses under Executive Order 11246, either in accordance with 41 CFR part 60-2, or in accordance with 41 CFR part 60-4, as appropriate, except as provided below.

(i) *Contractors with 100 or fewer employees.* If a contractor has a total workforce of 100 or fewer employees, it need not use the jobs groups established for utilization analyses under Executive Order 11246, and has the option to measure the representation of individuals with disabilities in its entire workforce with the utilization goal established in paragraph (a) of this section.

(ii) [Reserved]

(3) *Annual evaluation.* The contractor shall annually evaluate its utilization of individuals with disabilities in each job group, or in its entire workforce as provided in paragraph (d)(2)(i) of this section.

(e) *Identification of problem areas.* When the percentage of individuals with disabilities in one or more job groups, or in a contractor's entire workforce as provided in paragraph (d)(2)(i) of this section, is less than the utilization goal established in paragraph (a) of this section, the contractor must take steps to determine whether and where impediments to equal employment opportunity exist. When